

FOCUS

WORKERS' COMPENSATION NEWS



**Volume #3
Issue #2
1997**

LEGISLATIVE SUMMARY

This special edition of FOCUS will give you a brief summary of the changes affecting workers' compensation, wage and hour, and human rights laws enacted during the 1996 Legislative session. I've also listed staff members at the Employment Relations Division whom you can contact for additional information on these law changes.

CONTRACTOR REGISTRATION

■ Reduces the \$80 yearly contractor registration application fee to \$70 for a two year registration period. Effective 7-1-97

■ Removes an entity that hires a registered construction contractor from liability for workers' compensation, unemployment insurance

or wages and fringe benefits for: 1) the registered construction contractor; 2) the employees of the registered construction contractor; or 3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligation of the oral or written contract of the registered construction contractor. Effective 7-1-97.

■ Allows "handymen" to bid/work jobs up to \$2,500 without being registered as a contractor. Also exempts independent contractors with no employees, persons installing fire suppression equipment, water well contractors, and ranchers and farmers engaged in agriculture from the construction contractor registration requirement. Effective 7-1-97.

■ Provides a \$500 penalty if a contractor is working without being registered. Excludes most other enforcement and investigation provisions. Effective 7-1-97.

For more information, contact Drea Brown at 444-9586.

WORKERS' COMPENSATION COVERAGE

■ Includes participants in a public assistance program authorized under Title 53, Chapter 4, Parts 6 (FAIM) and 7 (AFDC) as employees for workers' compensation purposes. Requires coverage for Families Achieving Independence in Montana (FAIM) and Aid for Dependent Children (AFDC) recipients who are placed into a work setting for the purpose of developing employment skills. Effective 5-2-97.

■ Includes as volunteers, students enrolled in an elementary, secondary, or postsecondary educational institution participating in work-based learning activities who are not paid wages, and workers compensation coverage is not mandatory. If wages are paid, the student is considered the employee of the entity that pays the wages for all purposes under this chapter. Effective 7-1-97.

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- Allows partners of a limited liability partnership to elect workers' compensation coverage. Requires limited liability partnerships to have workers' compensation coverage for their employees. Effective 7-1-97.

- Exempts service performed by an ordained, commissioned, or licensed minister of a church from the workers' compensation coverage requirement. Effective 1-1-98.

- Expands corporate officer exemptions to include relatives of officers whose combined shares total 20% of the corporation or limited liability company shares. Also exempts officers or managers of a ditch company defined in 27-1-731. Effective 10-1-97.

For more information, contact Keith Messmer at 444-7710

INDEPENDENT CONTRACTOR

- Increases the term for an independent contractor exemption from one year to three years. Initial and renewal application fees are \$25. Effective 7-1-97.

- Returns the definition of 'independent contractor' to a two-part test in which an independent contractor must be free of control and have their own established business. Independent contractors must have either a workers' compensation policy or an exemption. Effective 7-1-97.

For more information, contact Drea Brown at 444-9586

ASSESSMENTS

- Increases the minimum assessment for Plan 1 and II insurers from \$200 to \$500. Effective 4-24-97; sunsets 7-1-99.

- Sets the assessment at 2.6% of paid losses in the preceding calendar year. Paid losses include total compensation benefits paid and total medical benefits paid up to \$200,000

per occurrence. Payment of the assessment must be submitted by the insurer in one installment on or before July 1 or two equal installments on or before July 1 and December 31 of each year. If an insurer fails to pay the assessment, the Department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Effective 7-1-99.

- Sets the subsequent injury fund assessment at paid losses for the calendar year preceding the year in which the assessment is collected. Paid losses include total compensation benefits paid and total medical benefits paid up to \$200,000 per occurrence. Effective 1-1-98.

- Directs the Department to transfer \$3.5 million to the administration fund and credit the amount to offset the insurer's assessment for the administration fund. Effective 4-16-97.

For more information, contact Keith Messmer at 444-7710

UNINSURED EMPLOYER FUND

- Allows the Uninsured Employers Fund to refer cases to the fraud unit. Effective 7-1-97.

- Repeals the \$1,000 death payment. Effective 1-1-98.

- Repeals the Underinsured Employers' Fund effective 3-28-97. Transfers surplus funds in the underinsured employers' fund to the uninsured employers' fund, effective 7-1-97.

For more information, contact Cathy Brown-Kummer at 444-7720.

REGULATIONS

- Eliminates the need for department approval for two or more business entities to form a group for the purpose of purchasing workers' compensation insurance. Also eliminates the requirement that the entities have

changes

More Changes . . .

the same or similar business pursuits. Effective 7-1-97.

- Eliminates the requirement that Plan II (private) insurers post a deposit with the department to guarantee payment of liability. Requires the department to return security deposits of plan 2 insurers held in trust on or before December 31, 1997. Effective 7-1-97.
- Creates a Workers' Compensation Regulation Advisory Council to review the states' workers compensation regulatory system and make recommendations to the Governor.

For more information, contact Keith Messmer at 444-7710.

- Amends hospital reimbursements. 1) Sets reimbursement at the greater of 69% of charges on 1-1-97 or the discount factor in effect on 6-30-97. On 7-1-98 further increases are limited to the annual percentage increase in the state's average weekly wage. 2) Gives the Department authority to develop a separate fee schedule for outpatient services by 7-1-98. Fees must be equal to the statewide average discount factor paid to hospitals for the same or equivalent procedure for outpatients. 3) Reimburses Medical Assistance Facilities at usual and customary charges. 4) Provides a method for calculating discount factors for merged hospitals using the weighted average at the time of the merger. Effective 7-1-97.

- Eliminates establishing utilization and treatment standards for all medical services. Effective 7-1-97.

For more information, contact Jeanne Johns at 444-6526.

CLAIMS

- Requires a claimant or claimant's representative signature on a claim before the 30-day time period for acceptance or denial to

begin. Failure by the insurer to comply with the time limitations is not an automatic acceptance of the claim. Allows Workers' Compensation Court to assess a penalty for non-compliance with 39-71-608. Effective 4-16-97 and applies retroactively to claims filed on or after March 27, 1973.

- Limits eligibility for Temporary Partial Disability (TPD) and Temporary Total Disability (TTD) benefits. Injured workers are not eligible for TPD or TTD benefits if they are released by the treating physician to return to a modified or alternative position with the same employer; if the wages received in the alternative or modified position combined with the TPD benefits would exceed their time of injury wages; and the worker refuses to accept the modified or alternative position. Effective 7-1-97.

- Removes the Department of Health and Human Services from the payment of vocational rehabilitation expenses through the Industrial Accident Rehabilitation Account. The Department of Labor and Industry will issue payments and reimbursements for vocational rehabilitation expenses on pre-7/1/97 claims. Provides payment of tuition, fees and books directly from the insurer to the claimant on accidents on or after 7/1/97. Deletes reference to the appeal process through the Department of Health and Human Services. Effective 7-1-97.

For more information, contact Carol Gleed at 444-6539.

DATA ANALYSIS

- Allows at risk insurers to obtain prior claim information. Information for disclosure is claimant's name, identification number, prior claim number, date of injury, part of body and prior insurer. Effective 7-1-97.

STATE FUND

- Increases the State Fund Board from five to seven members, with at least four members



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representing the State Fund policyholders, at least four members representing private, for-profit enterprises, and one of the seven members may be a licensed insurance producer. Effective 7-1-97.

For more information, contact the State Fund at 444-6500.

DISPUTE RESOLUTION

■ As part of the recent legislative session, House Joint Resolution 10, sponsored by Representative Chase Hibbard of Helena, was passed by both houses and signed by Governor Racicot.

HJR 10 recognizes that employers and employees are often faced with the costs and complexities associated with employment related disputes in areas such as unemployment eligibility, discrimination law, workers' compensation, wages and hours and wrongful discharge. The Department of Labor, in its employment related functions, is often the forum for litigants to resolve all, or some, of these disputes. In carrying out this role, the Department finds itself often requesting the same, or similar information, from the parties as it investigates complaints. Moreover, with three appellant boards assigned to the Department, the parties to these disputes may appear before each of these boards and may present information to several investigators, each in their own area of expertise. The burden on both sides of the table, and on the Department as well, can be costly, confusing and frustrating for all involved.

HJR 10 asks the Department to explore, investigate and report to the next legislative session on optional, integrated approaches that might be pursued to resolve employment related issues. The resolution further asks the Department to invite interested, knowledgeable persons, in the private and public sector, to assist in identifying and analyzing options.

At present the Department is gathering

information from national sources that relate to employment law. As this information is assimilated, a group will be formed to establish a method to carry out the legislative resolution, including formation of the advisory panel and a process to analyze and identify options. If you are interested in the actions of this group, you can get additional information from John Andrew at 406-444-4619, or through the Internet at JOANDREW@MT.GOV.

HUMAN RIGHTS ADDED TO DEPARTMENT

The current structure of the Human Rights Commission will undergo major changes as a result of the passage of SB 350. Specifically, the bill

- ◆ transfers hiring authority to DLI
- ◆ removes staff's authority to file a complaint or represent either party in a contested case hearing
- ◆ requires written notification of respondent before an investigation can begin
- ◆ provides strict time lines for respondents' notification and response, and for investigating complaints, making findings, holding contested case hearings, making a decision, and hearing appeals
- ◆ limits the period for compliance inspections required by conciliation agreements to one year
- ◆ allows complainants to file in district court if the department will not or can-not hold a hearing within 12 months.

The Human Rights Commission will be integrated in the department as of July 1. The investigatory and administrative support staff will become the Human Rights Bureau in the Employment Relations Division. The legal and hearings staff will move to the Legal and Hearings Bureaus within the Legal/Centralized Services Division.

Montana Employment Relations and Labor Arbitration Conference

Mark your calendars for September 24 and 25, and make plans to attend the 18th annual Montana Employment Relations and Labor Arbitration Conference in Missoula at the Red Lion Inn.

Highlighting the list of conference speakers this year will be former President of the National Academy of Arbitrators, Professor Arnold M. Zack; Supreme Court Justice Karla Gray, and Professor Charles Morris, editor-in-chief of the first and second editions of *The Developing Labor Law*.

Mr. Zack teaches Alternative Dispute Resolution at Yale Law School and at the Harvard Trade Union Program. He has authored 10 books on dispute settlement with a volume on Mediation and Arbitration of Employment Disputes coauthored with John Dunlop coming out this spring. His keynote session will address the expanded use of Arbitration in the employment arena.

The two-day conference will include workshops on employment law developments on the state and national level, escalation of unresolved conflict in the workplace, arbitration, and other alternative dispute resolution processes. Conference presenters also include Mike Johannason, Commissioner, Federal Mediation and Conciliation Service; Shelley Hopkins, Missoula employment attorney; arbitrators Jack Calhoun and John Abernathy; and Mr. Terry Jensen, Regional Attorney, Seattle, National Labor Relations Board, among other labor relations and arbitration practitioners.

The conference is co-sponsored by the Montana Arbitrators' Association, Montana

Department of Labor and Industry, Montana Board of Personnel Appeals, Federal Mediation and Conciliation Service, and the National Labor Relations Board.

For more information contact: Kathy van Hook, Conference Coordinator, P. O. Box 9051, Helena, MT 59604; or call 444-0038.

Governor's Conference on Workers' Compensation and Occupational Safety

Please join us at the Governor's conference September 8-10, 1997, at Big Sky, Montana. Our tentative agenda offers many exciting and educational topics and speakers. You'll want to attend the full conference as Representative Pat Williams has been invited to give the closing keynote address.

Safety topics included on the agenda are: *Indoor Air Quality, Adult Learning/Training, Sleep Disorders and Safety in the Workplace, Ergonomics, Conducting Self Inspections, Six Elements of a Successful Safety Program, Chemical Hazards, and OSHA Update and Direction.*

Workers' Compensation topics include: *Workings of the Supreme Court, Empowering Our Clients, Empowering Ourselfs, Preparing for Depositions/Trial Testimony, Fibromyalgia, Employee Leasing, Supreme Court Cases, and Successive Injuries.*

If you have not received a registration packet by August 8th or if you would like more conference information, please call Kara Christianson at 406-444-4637.



Conferences



Coming Soon

DON'T FIGHT IT - LEARN ABOUT IT - AT THE 1997 FALL ASSISTANCE FOR BUSINESS CLINICS



<u>City</u>	<u>Date</u>	<u>Location</u>	<u>Sponsor</u>	<u>Fee</u>
Billings	August 19 or 20	MSU - Billings	MSU - Billings (657-2203)	\$25
Lewistown	September 3	Yogo Park Inn	Chamber of Commerce (538-5436)	\$20
Bozeman	September 4	MSU Strand Union Bldg	Chamber of Commerce (586-5421)	\$20mem \$25 non-member
Butte	September 11	War Bonnet Inn	Chamber of Commerce (494-5595)	\$20
Helena	September 17	Colonial Inn	Chamber of Commerce (447-1941)	\$30

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ABC Clinics